

HOUSE BILL NO. 4050

January 27, 2021, Introduced by Reps. Cherry, Sneller, VanSingel, Howell and Sowerby and referred to the Committee on Natural Resources and Outdoor Recreation.

A bill to amend 1976 PA 442, entitled
"Freedom of information act,"
by amending section 13 (MCL 15.243), as amended by 2018 PA 68.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 13. (1) A public body may exempt from disclosure as a
2 public record under this act any of the following:

3 (a) Information of a personal nature if public disclosure of
4 the information would constitute a clearly unwarranted invasion of
5 an individual's privacy.

1 (b) Investigating records compiled for law enforcement
2 purposes, but only to the extent that disclosure as a public record
3 would do any of the following:

4 (i) Interfere with law enforcement proceedings.

5 (ii) Deprive a person of the right to a fair trial or impartial
6 administrative adjudication.

7 (iii) Constitute an unwarranted invasion of personal privacy.

8 (iv) Disclose the identity of a confidential source, or if the
9 record is compiled by a law enforcement agency in the course of a
10 criminal investigation, disclose confidential information furnished
11 only by a confidential source.

12 (v) Disclose law enforcement investigative techniques or
13 procedures.

14 (vi) Endanger the life or physical safety of law enforcement
15 personnel.

16 (c) A public record that if disclosed would prejudice a public
17 body's ability to maintain the physical security of custodial or
18 penal institutions occupied by persons arrested or convicted of a
19 crime or admitted because of a mental disability, unless the public
20 interest in disclosure under this act outweighs the public interest
21 in nondisclosure.

22 (d) Records or information specifically described and exempted
23 from disclosure by statute.

24 (e) A public record or information described in this section
25 that is furnished by the public body originally compiling,
26 preparing, or receiving the record or information to a public
27 officer or public body in connection with the performance of the
28 duties of that public officer or public body, if the considerations
29 originally giving rise to the exempt nature of the public record

1 remain applicable.

2 (f) Trade secrets or commercial or financial information
3 voluntarily provided to an agency for use in developing
4 governmental policy if:

5 (i) The information is submitted upon a promise of
6 confidentiality by the public body.

7 (ii) The promise of confidentiality is authorized by the chief
8 administrative officer of the public body or by an elected official
9 at the time the promise is made.

10 (iii) A description of the information is recorded by the public
11 body within a reasonable time after it has been submitted,
12 maintained in a central place within the public body, and made
13 available to a person upon request. This subdivision does not apply
14 to information submitted as required by law or as a condition of
15 receiving a governmental contract, license, or other benefit.

16 (g) Information or records subject to the attorney-client
17 privilege.

18 (h) Information or records subject to the physician-patient
19 privilege, the psychologist-patient privilege, the minister,
20 priest, or Christian Science practitioner privilege, or other
21 privilege recognized by statute or court rule.

22 (i) A bid or proposal by a person to enter into a contract or
23 agreement, until the time for the public opening of bids or
24 proposals, or if a public opening is not to be conducted, until the
25 deadline for submission of bids or proposals has expired.

26 (j) Appraisals of real property to be acquired by the public
27 body until either of the following occurs:

28 (i) An agreement is entered into.

29 (ii) Three years have elapsed since the making of the

1 appraisal, unless litigation relative to the acquisition has not
2 yet terminated.

3 (k) Test questions and answers, scoring keys, and other
4 examination instruments or data used to administer a license,
5 public employment, or academic examination, unless the public
6 interest in disclosure under this act outweighs the public interest
7 in nondisclosure.

8 (l) Medical, counseling, or psychological facts or evaluations
9 concerning an individual if the individual's identity would be
10 revealed by a disclosure of those facts or evaluation, including
11 protected health information, as defined in 45 CFR 160.103.

12 (m) Communications and notes within a public body or between
13 public bodies of an advisory nature to the extent that they cover
14 other than purely factual materials and are preliminary to a final
15 agency determination of policy or action. This exemption does not
16 apply unless the public body shows that in the particular instance
17 the public interest in encouraging frank communication between
18 officials and employees of public bodies clearly outweighs the
19 public interest in disclosure. This exemption does not constitute
20 an exemption under state law for purposes of section 8(h) of the
21 open meetings act, 1976 PA 267, MCL 15.268. As used in this
22 subdivision, "determination of policy or action" includes a
23 determination relating to collective bargaining, unless the public
24 record is otherwise required to be made available under 1947 PA
25 336, MCL 423.201 to 423.217.

26 (n) Records of law enforcement communication codes, or plans
27 for deployment of law enforcement personnel, that if disclosed
28 would prejudice a public body's ability to protect the public
29 safety unless the public interest in disclosure under this act

1 outweighs the public interest in nondisclosure in the particular
2 instance.

3 (o) Information that would reveal the exact location of
4 archaeological sites. The department of natural resources may
5 promulgate rules in accordance with the administrative procedures
6 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to provide for the
7 disclosure of the location of archaeological sites for purposes
8 relating to the preservation or scientific examination of sites.

9 (p) Testing data developed by a public body in determining
10 whether bidders' products meet the specifications for purchase of
11 those products by the public body, if disclosure of the data would
12 reveal that only 1 bidder has met the specifications. This
13 subdivision does not apply after 1 year has elapsed from the time
14 the public body completes the testing.

15 (q) Academic transcripts of an institution of higher education
16 established under section 5, 6, or 7 of article VIII of the state
17 constitution of 1963, if the transcript pertains to a student who
18 is delinquent in the payment of financial obligations to the
19 institution.

20 (r) Records of a campaign committee including a committee that
21 receives money from a state campaign fund.

22 (s) Unless the public interest in disclosure outweighs the
23 public interest in nondisclosure in the particular instance, public
24 records of a law enforcement agency, the release of which would do
25 any of the following:

26 (i) Identify or provide a means of identifying an informant.

27 (ii) Identify or provide a means of identifying a law
28 enforcement undercover officer or agent or a plain clothes officer
29 as a law enforcement officer or agent.

1 (iii) Disclose the personal address or telephone number of
2 active or retired law enforcement officers or agents or a special
3 skill that they may have.

4 (iv) Disclose the name, address, or telephone numbers of family
5 members, relatives, children, or parents of active or retired law
6 enforcement officers or agents.

7 (v) Disclose operational instructions for law enforcement
8 officers or agents.

9 (vi) Reveal the contents of staff manuals provided for law
10 enforcement officers or agents.

11 (vii) Endanger the life or safety of law enforcement officers
12 or agents or their families, relatives, children, parents, or those
13 who furnish information to law enforcement departments or agencies.

14 (viii) Identify or provide a means of identifying a person as a
15 law enforcement officer, agent, or informant.

16 (ix) Disclose personnel records of law enforcement agencies.

17 (x) Identify or provide a means of identifying residences that
18 law enforcement agencies are requested to check in the absence of
19 their owners or tenants.

20 (t) Except as otherwise provided in this subdivision, records
21 and information pertaining to an investigation or a compliance
22 conference conducted by the department under article 15 of the
23 public health code, 1978 PA 368, MCL 333.16101 to 333.18838, before
24 a complaint is issued. This subdivision does not apply to records
25 or information pertaining to 1 or more of the following:

26 (i) The fact that an allegation has been received and an
27 investigation is being conducted, and the date the allegation was
28 received.

29 (ii) The fact that an allegation was received by the

1 department; the fact that the department did not issue a complaint
2 for the allegation; and the fact that the allegation was dismissed.

3 (u) Records of a public body's security measures, including
4 security plans, security codes and combinations, passwords, passes,
5 keys, and security procedures, to the extent that the records
6 relate to the ongoing security of the public body.

7 (v) Records or information relating to a civil action in which
8 the requesting party and the public body are parties.

9 (w) Information or records that would disclose the ~~social~~
10 ~~security~~ **Social Security** number of an individual.

11 (x) Except as otherwise provided in this subdivision, an
12 application for the position of president of an institution of
13 higher education established under section 4, 5, or 6 of article
14 VIII of the state constitution of 1963, materials submitted with
15 such an application, letters of recommendation or references
16 concerning an applicant, and records or information relating to the
17 process of searching for and selecting an individual for a position
18 described in this subdivision, if the records or information could
19 be used to identify a candidate for the position. However, after 1
20 or more individuals have been identified as finalists for a
21 position described in this subdivision, this subdivision does not
22 apply to a public record described in this subdivision, except a
23 letter of recommendation or reference, to the extent that the
24 public record relates to an individual identified as a finalist for
25 the position.

26 (y) Records or information of measures designed to protect the
27 security or safety of persons or property, or the confidentiality,
28 integrity, or availability of information systems, whether public
29 or private, including, but not limited to, building, public works,

1 and public water supply designs to the extent that those designs
2 relate to the ongoing security measures of a public body,
3 capabilities and plans for responding to a violation of the
4 Michigan anti-terrorism act, chapter LXXXIII-A of the Michigan
5 penal code, 1931 PA 328, MCL 750.543a to 750.543z, emergency
6 response plans, risk planning documents, threat assessments,
7 domestic preparedness strategies, and cybersecurity plans,
8 assessments, or vulnerabilities, unless disclosure would not impair
9 a public body's ability to protect the security or safety of
10 persons or property or unless the public interest in disclosure
11 outweighs the public interest in nondisclosure in the particular
12 instance.

13 (z) Information that would identify or provide a means of
14 identifying a person that may, as a result of disclosure of the
15 information, become a victim of a cybersecurity incident or that
16 would disclose a person's cybersecurity plans or cybersecurity-
17 related practices, procedures, methods, results, organizational
18 information system infrastructure, hardware, or software.

19 (aa) Research data on road and attendant infrastructure
20 collected, measured, recorded, processed, or disseminated by a
21 public agency or private entity, or information about software or
22 hardware created or used by the private entity for such purposes.

23 **(bb) Records or information that would reveal the specific**
24 **location or GPS coordinates of game, including, but not limited to,**
25 **records or information of the specific location or GPS coordinates**
26 **of game obtained by the department of natural resources during any**
27 **restoration, management, or research project conducted under**
28 **section 40501 of the natural resources and environmental protection**
29 **act, 1994 PA 451, MCL 324.40501, or in connection with the**

1 expenditure of money under section 43553 of the natural resources
2 and environmental protection act, 1994 PA 451, MCL 324.43553. As
3 used in this subdivision, "game" means that term as defined in
4 section 40103 of the natural resources and environmental protection
5 act, 1994 PA 451, MCL 324.40103.

6 (2) A public body shall exempt from disclosure information
7 that, if released, would prevent the public body from complying
8 with 20 USC 1232g, commonly referred to as the family educational
9 rights and privacy act of 1974. A public body that is a local or
10 intermediate school district or a public school academy shall
11 exempt from disclosure directory information, as defined by 20 USC
12 1232g, commonly referred to as the family educational rights and
13 privacy act of 1974, requested for the purpose of surveys,
14 marketing, or solicitation, unless that public body determines that
15 the use is consistent with the educational mission of the public
16 body and beneficial to the affected students. A public body that is
17 a local or intermediate school district or a public school academy
18 may take steps to ensure that directory information disclosed under
19 this subsection ~~shall~~**is** not ~~be~~ used, rented, or sold for the
20 purpose of surveys, marketing, or solicitation. Before disclosing
21 the directory information, a public body that is a local or
22 intermediate school district or a public school academy may require
23 the requester to execute an affidavit stating that directory
24 information provided under this subsection ~~shall~~**will** not be used,
25 rented, or sold for the purpose of surveys, marketing, or
26 solicitation.

27 (3) This act does not authorize the withholding of information
28 otherwise required by law to be made available to the public or to
29 a party in a contested case under the administrative procedures act

1 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

2 (4) Except as otherwise exempt under subsection (1), this act
3 does not authorize the withholding of a public record in the
4 possession of the executive office of the governor or lieutenant
5 governor, or an employee of either executive office, if the public
6 record is transferred to the executive office of the governor or
7 lieutenant governor, or an employee of either executive office,
8 after a request for the public record has been received by a state
9 officer, employee, agency, department, division, bureau, board,
10 commission, council, authority, or other body in the executive
11 branch of government that is subject to this act.